



U.S. House of Representatives
Committee on Transportation and Infrastructure

Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

December 9, 2004

Lloyd A. Jones, Chief of Staff
Elizabeth Megginson, Chief Counsel

David Heymsfeld, Democratic Chief of Staff

Mr. Roland Watkins
Director of Arbitration Services
National Mediation Board
1301 K Street, NW
Suite 250 East
Washington, DC 20005

Attention: NMB Docket No. 2003-01N

Dear Mr. Watkins:

We are writing in opposition to the proposed regulation published in the *Federal Register* on August 9, 2004, in which the National Mediation Board (NMB) establishes procedural rules for the National Railroad Adjustment Board (NRAB), and conditions payment of referees' compensation on compliance with those new rules. In addition, the proposed regulation provides for the institution of user fees for the arbitration services of the NMB, the NRAB, and other arbitration boards. We believe that the NMB lacks authority to issue these regulations.

As part of its amendments to the Railway Labor Act (RLA) in 1934, Congress specifically provided for the autonomy of the NRAB as an agency separate and apart from the NMB with its own authority to "adopt such rules as it deems necessary to control proceedings before its respective divisions." See *45 United States Code section 153*. Pursuant to this explicit authority, the NRAB adopted procedural rules, which were published on October 10, 1934, as Circular No. 1 and revised as recently as June 23, 2003. The 1934 amendments made clear that the NMB's responsibility was carefully limited to the appointment of referees, in those cases where partisan members are unable to select a referee, and the payment of referees' compensation and other authorized expenses. During the 70 years since the NRAB was established, the NMB has never claimed authority to establish procedural rules for the NRAB or the other arbitration boards.

Under the proposed regulation, the NMB intends to enforce the new procedures by only paying referees for arbitration of cases at the NRAB that have progressed according to a certain time schedule. Congress never authorized the NMB to refuse to make such payments in the event that any party or referee is unable to meet certain time limits. Furthermore, the proposed regulation states that "the NMB will only pay for the arbitration of cases on Public Law Boards and Special Boards of Adjustment (SBAs) heard and decided within one year of the addition of the case to the Board." Again, there is no authority for this under current law.

Mr. Ronald Watkins
Page Two

In 1966, Congress passed an amendment to the RLA to create Public Law Boards and SBAs as an option to the NRAB. Again, the NMB was provided no authority over the Public Law Boards. Public Law Board Procedures were modeled after the NRAB in that the partisan board members have the authority to resolve claims, or, should they fail to do so, they may appoint a referee. Only in the event the partisan members of the Public Law Board are unable to agree upon a referee can they request the NMB to appoint a neutral arbitrator. The 1966 amendments stated: "The Neutral person as selected or appointed *shall* be compensated and reimbursed for expenses by the Mediation Board." The NMB cannot now condition such compensation on compliance with the proposed NMB procedures, without a Congressional authorization.

The proposed regulation would also establish new user fees for the arbitration of services of the NMB, the NRAB, and other arbitration boards. This proposal is in direct conflict with the 1934 and 1966 amendments to the RLA, in which Congress required the Federal Government to pay for arbitration services that were final and binding, in return for rail labor agreeing to forgo strikes on minor disputes. Such strikes had occurred frequently prior to these amendments. The proposed regulation would therefore undermine the RLA, its legislative history, and the concessions that rail labor made.

Further, the NMB cites 45 United States Code section 154 as the general underlying agency authority to establish and collect a user fee for the purpose of making the process of arbitration more efficient. However, that statute does not contain any authority for the NMB to establish and collect a user fee. The user fee that is cited in the proposed regulation also does not meet the criteria for the establishment of a user fee under the general government authority found in 31 United States Code section 9701. Under that authority, user fees are allowed to be collected only for the purpose of offsetting the cost of services to the public. The government has no existing authority to institute a user fee for the purpose of controlling the flow or administration of government services and discouraging the American public from utilizing those services. Moreover, it is the NMB, not the disputing parties, that is required, under current law, to pay for arbitration services, and the NMB receives appropriated dollars annually to fulfill this statutory authority. Therefore, any collection of fees by the NMB would require new statutory authority from the Congress.

Finally, the NMB states that the purpose of the proposed regulation is to "facilitate the timely resolution of disputes in the rail industry" and eliminate the backlog of pending cases at the NRAB and the other arbitration boards. However, the backlog of pending cases has already been significantly reduced and continues to decline. In 1985, a committee of carrier and union representatives was formed to make recommendations for a more efficient arbitration system. A number of beneficial changes were made as a result of the committee's recommendations. The backlog of pending cases has now been significantly reduced from a total of 22,173 pending cases in 1985 to 5,136 pending cases in 2004.

We believe the proposed regulation will result in unions and individuals being discouraged from pursuing grievances. Under the NMB's proposal, the fees for a claim, from initial docketing through arbitration, would be a minimum of \$75 and as high as \$350. Many claims are for contract

violations where the employee involved suffers a financial loss that is less than the proposed filing fees; examples include loss of a day's pay, loss of overtime, or denial of skill differential or other special pay, travel pay, or travel expenses. The proposed fees would discourage the filing for arbitration over such claims.

We, therefore, urge the NMB to withdraw this proposal.

Sincerely,

Jim Oberstar
Bart Gordon
William D. Spinale
Elijah E. Cummings
Michael Mittone
Robert Mundy
Tim Z
Julia Carson
Gy Andee
Donald L. Bonnell
Lynelle Royal-Allard
John T. Conklin
Bob Filner

Corine Brown
Gerold Nadler
Peter DeFazio
Bill Pascrell
Earl Blumenfeld
Shelley Buehler
Chi Van Holl
Raul M. Grijalva
Ji Matt
Martin O. Sabo
Jim Huell
T. Hask
Carolyn B. Maloney

~~Wendell~~

Jan Schuchman

Alfred R. Wynn

Juanita Miller - The Donald

Beth McCullen

Ellen Gausche

George Miller

Michael E. Capuano

Rick Zuccone

Chet Edwards

Ed Pastor

~~John~~ Tomlin

Joe Baca

Kendrick B. Meek

Neil Abernethy

L C Louch

Al Rakell

Lane Evans

Eddie Bernice Johnson

Linda J. Sanchez

John W. Oliver

John F. Terry

Mrs V. Gutierrez

Rosa L. J. Lamm

~~James~~ Brady

John A. Brady

Charles A. Pizary

Carolyn McCarty

Jim McDermott

Collin C. Peterson

Chet Edwards

William C. Pelt

Ray L. Pelt

Edward L. Berman

Red Strickland

Ron Kind

Lynn C. Woolsey

Bill Z. Pelt

Ernie L. Enger

W. F. Lynch

Adolman B. Ortiz

Nita M. Lowrey

Joe E. Luman

Norm Sichs

Hilda L. Solis

Carolyn Cheek Kelpatnick

Rich Bonker

Sherrod Brown

Wm. Lacy Clay

Thomas W. H. H.

Donald Payne

John Long

Sam Carr

Sandra Love

James R. Langerin

Darlene Hasley

Jim Moran

Cole E. Uildee

Devin Moran

C. A. Dutch Rypperskungen

Tammy Baldini

Peter J. Visclosky

Robert A. ...

John ...

Brad Sherr

Gary ...

W. McHenry

Lauren ...

Thomas ...

Shirley ...

Robert J. ...

Eric ...

Richard E. ...

Charles ...

Sally ...

But ...

Paul ...

Wayne ...

Steven ...

Signe E. Watson

Little ...

Forrest ...

Mark ...

Mike ...

Tom Lantos

Marcy ...

Michael R. ...

Paul ...

Paul ...

James E. ...

John ...

Patrick J. Kennedy
Mike Delapina

Rush Holt

Joe Hoefel
Dan Cury

~~Gregory Meehan~~
Tom Chalk
Stephanie Kreder
Ben Cusick

MEMBERS SIGNATURES
FOR NMB LETTER
December 10, 2004

Rep. James L. Oberstar

Rep. Corrine Brown

Rep. Bart Gordon

Rep. Jerrold Nadler

Rep. William O. Lipinski

Rep. Peter DeFazio

Rep. Elijah Cummings

Rep. Bill Pascrell

Rep. Michael M. Honda

Rep. Earl Blumenauer

Rep. Robert Menendez

Rep. Shelley Berkley

Rep. Tim Bishop

Rep. Chris Van Hollen

Rep. Julia Carson

Rep. Raul M. Grijalva

Rep. Jay Inslee

Rep. Jim Matheson

Rep. Leonard L. Boswell

Rep. Martin O. Sabo

Rep. Lucille Roybal-Allard

Rep. Jim Marshall

Rep. Jerry F. Costello

Rep. Tim Holden

Rep. Bob Filner

Rep. Carolyn B. Maloney

Rep. Eleanor Holmes-Norton

Rep. Nick Rahall

Rep. Jan Schakowsky

Rep. Lane Evans

Rep. Albert R. Wynn

Rep. Eddie Bernice Johnson

Rep. Juanita Millender-McDonald

Rep. Anthony Weiner

Rep. Betty McCollum

Rep. Linda T. Sanchez

Rep. Ellen O. Tauscher

Rep. John W. Olver

Rep. George Miller

Rep. John F. Tierney

Rep. Michael E. Capuano

Rep. Rick Larsen

Rep. Chet Edwards

Rep. Ed Pastor

Rep. Joseph Crowley

Rep. Joe Baca

Rep. Kendrick B. Meek

Rep. Neil Abercrombie

Rep. Stephen C. LaTourette

Rep. Collin C. Peterson

Rep. Gary L. Ackerman

Rep. Howard L. Berman

Rep. Ted Strickland

Rep. Ron Kind

Rep. Lynn Woolsey

Rep. Brian Baird

Rep. Eliot Engel

Rep. Stephen F. Lynch

Rep. Solomon P. Ortiz

Rep. Nita Lowey

Rep. Jose E. Serrano

Rep. Norm Dicks

Rep. Hilda L. Solis

Rep. Luis V. Gutierrez

Rep. Rosa L. DeLauro

Rep. Maurice Hinchey

Rep. Robert A. Brady

Rep. Charles A. Gonzalez

Rep. Carolyn McCarthy

Rep. Jim McDermott

Rep. Collin C. Peterson

Rep. Rick Boucher

Rep. Sherrod Brown

Rep. Wm. Lacy Clay

Rep. Stephanie Tubbs-Jones

Rep. Donald M. Payne

Rep. John Conyers

Rep. Sam Farr

Rep. Sander Levin

Rep. James R. Langevin

Rep. Darlene Hooley

Rep. Jim Moran

Rep. Dale E. Kildee

Rep. Dennis Moore

Rep. C.A. Dutch Ruppersberger

Rep. Carolyn Cheeks Kilpatrick

Rep. Peter J. Visclosky

Rep. Robert Andrews

Rep. Gene Green

Rep. Brad Sherman

Rep. Barney Frank

Rep. Donna M. Christensen

Rep. Xavier Becerra

Rep. Steny Hoyer

Rep. Sheila Jackson Lee

Rep. Robert T. Matsui

Rep. Edolphus Towns

Rep. Richard E. Neal

Rep. Charles B. Rangel

Rep. Bobby L. Rush

Rep. Bernie Sanders

Rep. Patrick J. Kennedy

Rep. Mike Delahunt

Rep. Rush Holt

Rep. Joe Hoeffel

Rep. David Obey

Rep. Tammy Baldwin

Rep. Brad Miller

Rep. Major R. Owens

Rep. Steven R. Rothman

Rep. Diane E. Watson

Rep. Silvestre Reyes

Rep. Loretta Sanchez

Rep. Michael A. Michaud

Rep. Mike Doyle

Rep. Tom Lantos

Rep. Marcy Kaptur

Rep. Michael R. McNulty

Rep. John D. Dingell

Rep. Bart Stupak

Rep. James E. Clyburn

Rep. Chaka Fattah

Rep. Gregory W. Meeks

Rep. Tom Udall

Rep. Stephanie Herseth

Rep. Ben Cardin